

No. 3590

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United States<sup>7</sup>

Circuit Court of Appeals

For the Ninth Circuit.

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EMIL HOOF,

Plaintiff in Error,

vs.

PACIFIC AMERICAN FISHERIES, a Corpora-  
tion,

Defendant in Error.

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Transcript of Record.

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Upon Writ of Error to the United States District Court of  
the Western District of Washington, Northern Division.

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FILED

DEC 8 - 1920

F. D. MONCKTON,  
CLERK.



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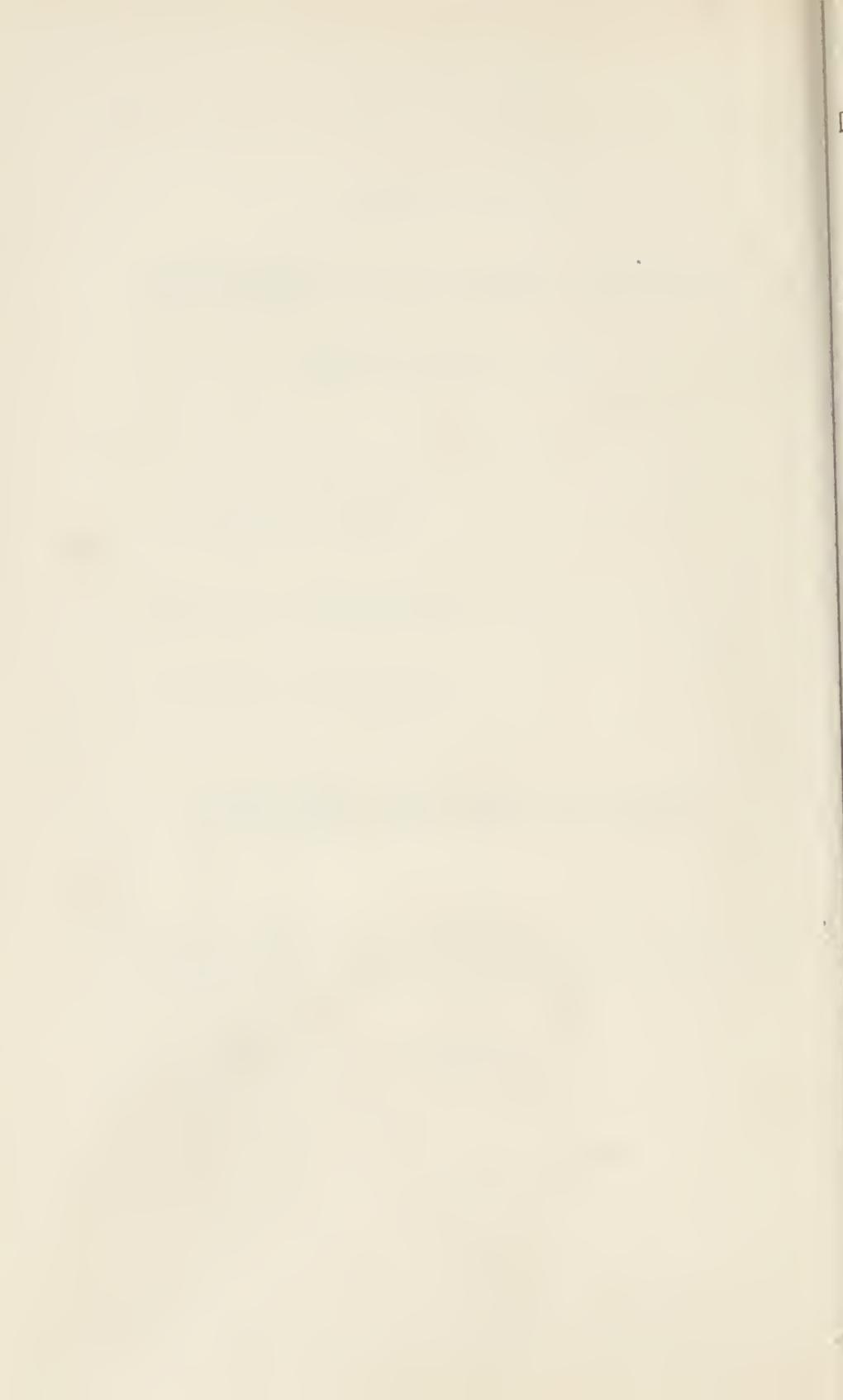
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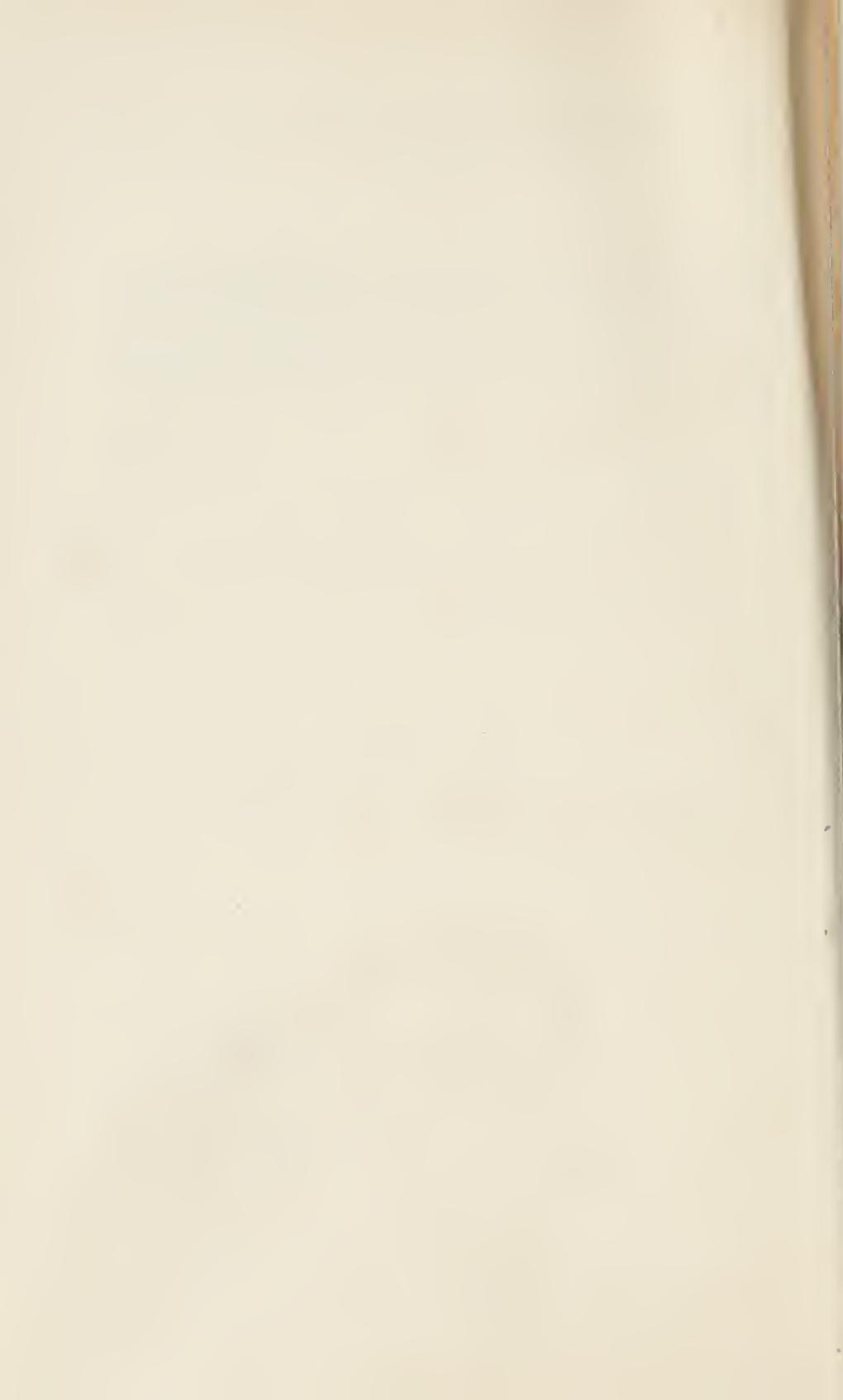


# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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**Names and Addresses of Counsel.**

THOS. R. WATERS, Esq., Attorney for Plaintiff  
in Error,

Bellingham, Washington.

Messrs. PERINGER & THOMAS, Attorneys for  
Plaintiff in Error,

Bellingham, Washington.

Messrs. KERR & McCORD, Attorneys for Defendant  
in Error,

Hoge Building, Seattle, Washington. [1\*]

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In the Superior Court of the State of Washington  
in and for the County of Whatcom.

No. 14,163.

EMIL HOOF,

Plaintiff,

vs.

PACIFIC AMERICAN FISHERIES, a Corporation,

Defendant.

**Complaint.**

Comes now the plaintiff and for cause of action  
against the defendant alleges:

I.

That during all times herein mentioned the plaintiff was and is a citizen of the United States of America, residing at Bellingham, Washington, therein, and that the defendant is a foreign corpo-

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\*Page-number appearing at foot of page of original certified Transcript  
of Record.

ration engaged, among other things in the taking and canning of salmon and building of ships at Bellingham, Washington, for the United States of America, on a cost plus basis.

## II.

That on the 16th day of April, 1919, and for a long time prior thereto, the plaintiff was employed by the defendant herein in the capacity of watchman on said ships it had built for the Government and which were launched but had not been put into actual commission.

## III.

That on or about this day aforesaid at about 11:30 P. M. of said day, while plaintiff was employed by the defendant as aforesaid and in the actual discharge of his duties in the course of his employment was making the rounds as watchman on a vessel or ship built by the defendant for the Government but not yet completed for the Government and generally known and designated as "Cleo," attempted to descend from the forward bridge deck thereof to the forward main deck below by means of steps which had been prepared and placed there by the defendant for that purpose. That said [2] steps at this time were not protected by a hand-rail or secured to the bridge deck or main deck of said vessel in any manner whatsoever; that there were two such steps on said vessel, one aft and one forward, leading from the bridge deck to the main deck, and the plaintiff, in the course of his duties and exercising due care

for his safety, at this time was attempting to descend from said bridge deck on the forward steps leading to the main deck.

#### IV.

That the plaintiff started to go down said steps stepping forward with his right foot on the first step, and as he was lifting his left foot preparatory to stepping thereon, the said steps slipped upon the floor of the main deck of said vessel, which had just been freshly oiled that day, and upon slipping, said steps swerved and fell to the main deck, thereby violently throwing plaintiff to said deck, where he fell on his back.

#### V.

That it was the duty of said defendant to securely fasten said steps to the main deck of said vessel, so that same could not have slipped or fallen, and the plaintiff at the time he attempted to use the same as aforesaid believed them to be so secured and fastened and did not know that said floor, upon which said steps rested, had been oiled, or that the steps were not fastened and believed that he could use the same in safety, and had no reason to believe otherwise than that the defendant company had furnished him a safe place in which to perform his duties as aforesaid.

#### VI.

That at this time said vessel "Cleo" had been launched and was lying in Bellingham Bay, in the waters of Puget Sound, and was made fast to the dock of defendant company at South Bellingham,

Washington; that said ship was then in navigable waters of the United States of America and the Industrial Insurance or Workman's [3] Act of this State has no authority or jurisdiction to award, or allow plaintiff any compensation or relief because of his injuries aforesaid; that plaintiff applied to said authorities for relief, which they refused on the ground that such cases did not come within their jurisdiction and that they had no authority to allow him compensation.

### VII.

That the defendant was negligent in oiling the floor of the main deck of said vessel, and in not making said steps fast to the bridge or the main deck thereof, so that the same could not have slipped, and that because of said negligent acts and omissions on the part of said defendant the plaintiff was severely and permanently injured and was confined to his bed for a period of six and one-half weeks, and thereafter compelled to remain in bed most of the time for a period of two weeks longer. That he suffered intensely and at all times since has suffered from a severe shock to his nervous system, occasioned thereby, and from internal injuries the extent of which cannot be determined, and from constant soreness in the lumbar region of the back.

### VIII.

That at the time of said injuries the plaintiff was a strong, healthy and able-bodied man of the age of fifty-three years and earning one hundred

forty-four (\$144.00) dollars per month, and that because of said injuries and severe shock to his nervous system the plaintiff is suffering from traumatic neurasthenia and is a physical wreck, unable to enjoy normal sleep, and is unable to pursue any employment, mental or physical, to earn a livelihood, which condition will likely be permanent. [4]

## IX.

That because of said injuries plaintiff has been damaged to the full sum of Eighteen Thousand Dollars (\$18,000.00).

WHEREFORE plaintiff prays judgment against the defendant in the full sum of Eighteen Thousand Dollars (\$18,000.00), together with his necessary costs and disbursements herein expended.

EMIL HOFF,  
Plaintiff.

State of Washington,  
County of Whatcom,—ss.

Emil Hoff, being first duly sworn, on oath deposes and says: That he is the plaintiff named in the within entitled action, and has read the within and foregoing complaint and believes the same to be true.

EMIL HOFF.

Subscribed and sworn to before me this 28th day of November, 1919.

LESTER WHITMORE,  
Notary Public in and for the State of Washington,  
Residing at Bellingham, therein.

Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 13, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [5]

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United States District Court, Western District of Washington, Northern Division.

No. 4999.

EMIL HOFF,

Plaintiff,

vs.

PACIFIC AMERICAN FISHERIES,

Defendant.

**Demurrer.**

Comes now the defendant—demurs to the complaint of the plaintiff on the following grounds:

I.

That the Court has no jurisdiction of the subject matter of the cause of action attempted to be pleaded in the said complaint, or the parties thereto.

II.

Said complaint does not state facts sufficient to constitute a cause of action and affirmatively shows that the plaintiff has no cause of action or right to recover.

KERR & McCORD,  
Attorneys for Defendant.

United States of America,  
Western District of Washington,—ss.

W. Z. Kerr, being first duly sworn, on oath deposes and says that he is one of the attorneys for the defendant, has read the foregoing demurrer, knows the contents thereof, believes the same to be meritorious and well founded in law.

W. Z. KERR.

Subscribed and sworn to before me this third day of April, 1920.

[Seal] S. H. KERR,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

Rec'd copy, April 5, 1920.

LESTER WHITMORE,  
Atty. for Pltf.

[Indorsed]: Demurrer. Filed in the United States District Court, Western District of Washington, Northern Division. June 21, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [6]

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In the District Court of the United States for the  
Western District of Washington, Northern  
Division.

No. 4999.

EMIL HOOF,

Plaintiff,

vs.

PACIFIC AMERICAN FISHERIES,

Defendant.

**Order Sustaining Demurrer and Judgment of Dismissal.**

This cause came on for hearing on demurrer of the defendant to the plaintiff's complaint and was argued by counsel.

The Court having considered the matter now orders that the said demurrer be, and it is hereby, sustained, to which ruling the plaintiff excepts and the exception is allowed.

And it appearing to the Court that the Court has no jurisdiction of the cause of action pleaded in said complaint, it is hereby ordered that this action be and it is hereby dismissed, to which ruling the plaintiff excepts and the exception is allowed.

Done in open court this 7th day of July, 1920.

EDWARD E. CUSHMAN,  
United States District Judge.

O. K. as to form.

THOS. P. WATERS,  
PERINGER & THOMAS,  
Attys. for Pltf.

[Indorsed]: Order Sustaining Demurrer and Judgment of Dismissal. Filed in the United States District Court, Western District of Washington, Northern Division. July 7, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [7]

In the District Court of the United States, for the  
Western District of Washington, Northern  
Division.

No. 4999.

EMIL HOOF,

Plaintiff,

vs.

PACIFIC AMERICAN FISHERIES,

Defendant.

**Petition for Writ of Error.**

Now comes Emil Hoof, plaintiff, by his attorneys,  
Thos. R. Waters and Peringer & Thomas, and re-  
spectfully shows:

That on the 7th day of July, 1920, the Court sustained a demurrer filed herein to the plaintiff's complaint, to which ruling of the Court the defendant then and there excepted and the exception was allowed; and on said day it was ordered and adjudged by the Court that this Court was without jurisdiction of the cause of action pleaded in the plaintiff's complaint and the action was dismissed, to which ruling and judgment of the Court the plaintiff then and there excepted and the exception was allowed.

Your petitioner, feeling himself aggrieved by the said order and judgment entered therein as aforesaid, herewith petitions the Court for an order allowing him to prosecute a writ of error to the Circuit Court of Appeals of the United States, for

the Ninth Circuit, under the laws of the United States in such cases made and provided.

WHEREFORE, premises considered, your petitioner prays that a writ of error do issue; that an appeal in his behalf to the United States Circuit Court of Appeals aforesaid, sitting at San Francisco in said Circuit, for the correction of the errors complained of, and herewith assigned (assignments or error being presented herewith), be allowed, and [8] that an order be made that all further proceedings may be suspended until the determination of said writ of error by the Circuit Court of Appeals; that an order be made fixing the amount of security to be given by the plaintiff in error, conditioned as the law directs, and to the effect that the said Emil Hoof shall prosecute the said appeal to effect and answer all costs if he fails to make his plea good.

THOS. R. WATERS and  
PERINGER & THOMAS,  
Attorneys for Petitioner in Error.

Writ of error allowed upon giving bond as required by law for the sum of \$500.00.

Dated Oct. 9, 1920.

EDWARD E. CUSHMAN,  
Judge.

Order filed in the United States District Court, Western District of Washington, Northern Division, Oct. 9, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

[Indorsed]: Petition for Writ of Error. Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 4, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [9]

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In the District Court of the United States, for the  
Western District of Washington, Northern  
Division.

No. 4999.

EMIL HOOF,

Plaintiff,

vs.

PACIFIC AMERICAN FISHERIES,

Defendant.

### **Assignment of Errors.**

Now comes Emil Hoof, the plaintiff in the above numbered and entitled cause, and in connection with his petition for writ of error in this cause files the following assignment of errors, upon which he will rely upon his prosecution of the appeal in the above-entitled cause from the judgment made by this Honorable Court on the 7th day of July, 1920:

#### **I.**

That the United States District Court for the Western District of Washington, Northern Division, erred in sustaining the demurrer interposed by the above-named defendant to the original complaint filed in the cause.

## II.

That the United States District Court for the Western District of Washington, Northern Division, erred in holding that it did not have jurisdiction of this cause or the parties, and in entering an order and judgment dismissing the plaintiff's complaint.

WHEREFORE, the appellant prays that the said order and judgment be reversed; that the United States District Court for the Western District of Washington, Northern Division, be ordered to enter an order reversing its said decision in said cause.

THOS. R. WATERS and  
PERINGER & THOMAS,  
Attorneys for Plaintiff in Error. [10]

[Indorsed]: Assignment of Errors. Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 4, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [11]

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In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 4999.

EMIL HOOF,

Plaintiff,

vs.

PACIFIC AMERICAN FISHERIES,

Defendant.

**Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS: That we, Emil Hoof, as principal, and New Amsterdam Casualty Co. of New York, as surety, are held and firmly bound unto Pacific American Fisheries in the sum of five hundred dollars (\$500.00), lawful money of the United States, to be paid to it and to its respective successors or assigns, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, our heirs, executors, administrators, successors or assigns, by these presents.

Sealed with our seals and dated this 29 day of September, 1920.

WHEREAS, the above-named Emil Hoof has prosecuted a writ of error to the Circuit Court of Appeals of the United States, for the Ninth Circuit, to reverse the judgment of the District Court of the United States, for the Western District of Washington, Northern Division, in the above-entitled cause.

NOW, THEREFORE, the condition of this obligation is such that if the above-named Emil Hoof shall prosecute his said appeal to effect and answer all costs, if he fails to make good his plea, then this obligation shall be void; otherwise, to re-

main in full force and effect.

EMIL HOOF,  
Principal.

NEW AMSTERDAM CASUALTY CO. OF  
NEW YORK,

Surety.

[Seal] By LESTER WHITMORE,  
Its Attorney in Fact.

Approved Oct. 9, 1920.

EDWARD E. CUSHMAN,  
Judge. [12]

[Indorsed]: Bond. Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 9, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [13]

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In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 4999.

EMIL HOOF,

Plaintiff,

vs.

PACIFIC AMERICAN FISHERIES,  
Defendant.

**Praecipe for Transcript of Record.**

To the Clerk of the United States District Court, for the Western District of Washington, Northern Division:

In making up the record in the above-entitled

cause for the United States Circuit Court of Appeals, we desire to have included in the transcript the following:

1. The complaint or petition.
2. The demurrer filed by the defendant.
3. The order of the Court sustaining the demurrer, together with the order and judgment of the Court dismissing the cause for want of jurisdiction, and the exception taken and allowed at said time.
4. Petition for writ of error.
5. Assignment of errors.
6. Bond and approval.
7. Allowance of writ of error.
8. The writ of error.
9. Citation in error.
10. Acceptance of service of citation on back of said citation in error.
11. Clerk's certificate.
12. Praeclipe for record.

THOS. R. WATERS and  
PERINGER & THOMAS,  
Attorneys for Plaintiff.

We waive the provision of the act approved February 13, 1911, and direct that you forward typewritten transcript to the Circuit Court of Appeals for printing as provided under Rule 105 of this Court.

PERINGER & THOMAS,  
Attorneys for Plaintiff. [14]

[Indorsed]: Praecipe. Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 15, 1920. F. M. Harshberger, Clerk. S. E. Leitch, Deputy. [15]

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United States District Court, Western District of Washington, Northern Division.

No. 4999.

EMIL HOOF,

Plaintiff,

vs.

PACIFIC AMERICAN FISHERIES,

Defendant.

**Certificate of Clerk U. S. District Court to Transcript  
of Record.**

United States of America,  
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court, for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 15, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the clerk of said Court, and that the same constitute the record on return to said writ of error herein from the judg-

ment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [16]

Clerk's fee (Sec. 828, R. S. U. S.) for making record, certificate or return, 22 folios at 15c. \$3.30  
Certificate of Clerk to transcript of record—

4 folios at 15c.....	.60
Seal to said certificate.....	.20

I hereby certify that the above cost for preparing and certifying record, amounting to \$4.10, has been paid to me by attorneys for plaintiff in error.

I further certify that I hereto attach and herewith transmit the original writ of error and original citation issued in this cause.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 21st day of October, 1920.

[Seal]

F. M. HARSHBERGER,  
Clerk U. S. District Court. [17]

In the United States Circuit Court of Appeals,  
for the Ninth Circuit.

No. —.

EMIL HOOF,

Plaintiff in Error,

vs.

PACIFIC AMERICAN FISHERIES,

Defendant in Error.

**Writ of Error.**

United States of America,—ss.

The President of the United States to the Honorable Judge of the District Court of the United States, for the Western District of Washington, Northern Division, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment on a demurrer which is in the said District Court before you, between Emil Hoof, plaintiff in error, and Pacific American Fisheries, defendant in error, a manifest error has happened to the damage of Emil Hoof, plaintiff in error, as by the said complaint appears, and we being willing that the error, if any hath been, should be corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that under your seal you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, in the State of California, where

said court is sitting, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held, and the record and proceedings aforesaid being inspected, the said United States Court of Appeals may cause further to be done therein to correct the error what of right and according to the laws and customs of the United States should be done. [18]

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this the 9th day of October, 1920.

[Seal] F. M. HARSHBERGER,  
Clerk of the U. S. District Court for the Western  
District of Washington.

Allowed this the 9th day of October, 1920.

EDWARD E. CUSHMAN,  
United States Judge.

[Indorsed]: Issued in the United States District Court, Western District of Washington, Northern Division. Oct. 9, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [19]

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In the District Court of the United States, for the  
Western District of Washington, Northern  
Division.

No. 4999.

EMIL HOOF,

Plaintiff,

vs.

PACIFIC AMERICAN FISHERIES,

Defendant.

**Citation on Writ of Error.**

United States of America,—ss.

To the Pacific American Fisheries, GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals, for the Ninth Circuit, to be held in the city of San Francisco, State of California, on the 8th day of November, 1920, pursuant to an order allowing a writ of error filed and entered in the clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, on a final judgment signed, filed and entered on the 7th day of July, 1920, in that certain action, being cause No. 4999, wherein Emil Hoof is plaintiff and you are the defendant and appellee, to show cause, if any there be, why the judgment rendered against the said appellant, as in said order allowing appeal mentioned, should not be corrected and why speedy justice should not be done in the premises.

WITNESS, the Honorable EDWARD E. CUSHMAN, United States District Judge for the Western District of Washington, Northern Division, this 9th day of October, 1920.

[Seal]                   EDWARD E. CUSHMAN,  
United States District Judge for the Western Dis-  
trict of Washington, Northern Division.

We acknowledge receipt of a copy of the within document this 13th day of October, 1920.

KERR & McCORD,  
Attorneys for Defendant.

[Indorsed]: Issued in the United States District Court, Western District of Washington, Northern Division. Oct. 9, 1920. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [20]

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[Endorsed]: No. 3590. United States Circuit Court of Appeals for the Ninth Circuit. Emil Hoof, Plaintiff in Error, vs. Pacific American Fisheries, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed October 23, 1920.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

